

I. REMARKS

Claims 1-24 are currently pending in this application. Of these, claims 1-14 are under examination and claims 15-24 stand withdrawn from consideration by way of Applicants' election under the Restriction Requirement mailed March 25, 2004. Claims 1-14 stand rejected. No amendments are requested.

II. THE REJECTION

Claims 1-14 stand rejected under 35 U.S.C. § 103 as allegedly obvious in view of U.S. Patent 5,873,071 (issued February 16, 1999) to Ferstenberg *et al.* ("Ferstenberg"). OFFICE ACTION p. 2, ¶3.

Applicants' respectfully request withdrawal of this 35 U.S.C. § 103 rejection because Ferstenberg neither teaches nor suggests each and every of Applicants' material claim elements and provides no motivation to one of ordinary skill in the art to practice Applicants' claimed invention.

To support obviousness, a reference must suggest to one of ordinary skill in the art that the claimed invention could be carried out with a reasonable likelihood of success. Both the suggestion and the expectation of success must be founded in the prior art. In re Dow Chem. Co., 837 F.2d 469, 472 (Fed. Cir. 1988). Furthermore, it is well settled that to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all claim limitations. MPEP § 2143.03; In re Royka, 180 U.S.P.Q. 580 (C.C.P.A. 1974); Ex Parte Masato Ono, 2000 WL 33520305, *3; Atlas Powder Co. v. E.I. DuPont De Nemours & Co., 750 F.2d 1569, 1575 (Fed. Cir. 1984).

A. APPLICANTS' CLAIMED INVENTION

Applicants' claims are directed to systems and methods useful to: (1) facilitate exchange of an agricultural commodity, such as grain, between a buyer (also referred to by Applicants as an intermediary) and a seller (also referred to by Applicants as a producer or a third party); and (2) automatically executing a hedge transaction on behalf of the buyer to offset his risk associated with purchasing the commodity.

The system stores information relating to the buyer, such as the agricultural commodity the buyer wishes to purchase, the amount, and/or a basis price. The system is further configured

to request data from an external source, such as trading prices from a commodities exchange (e.g., real-time futures prices from the Chicago Board of Trade).

The system then generates an exchange structure specific to the buyer. An example of an exchange structure is an offer by the buyer to purchase an agricultural commodity for a flat price, wherein the flat price is calculated by adding the commodity's current trading price to the buyer's basis.

Such generation of an exchange structure specific to the buyer is recited in Applicants' independent claims 1 and 5 as follows.

Applicants' Claim 1: "... wherein the web page includes the quantity of the agricultural commodity desired to be purchased by the intermediary, and a flat price for the commodity wherein the third computing subsystem calculates the flat price by adding the basis provided by the intermediary from the current trading price obtained from the commodities exchange . . ."

Applicants' Claim 5: "... further configured to generate an exchange structure specific to the intermediary based upon the information stored in the memory for the intermediary and the data obtained from the external source, wherein the second computing subsystem can transmit the exchange structure to a third party . . ."

The systems and methods of the invention can then transmit the exchange structure to a producer or a third party.

Furthermore, the systems and methods of the invention can automatically hedge the buyer's purchase, that is, engage in a separate commercial transaction with a centralized exchange on behalf of the buyer. This separate commercial transaction is apart from the transaction between the buyer and the seller. For example, the systems and methods of the invention permit the buyer execute a hedge transaction with a commodities exchange, such as the Chicago Board of Trade, to hedge the buyer's purchase from the producer.

The aspect of automatic hedging or automatically engaging in a separate commercial transaction with a centralized exchange on behalf of the buyer is reflect in Applicants' independent claims 1 and 5 as follows.

Applicants' Claim 1: "... and to communicate with the commodities exchange on behalf of the intermediary in order to attempt to obtain a futures contract for the commodity in an amount as close as possible to (within pre-set parameters), but not exceeding the available quantity . . ."

Applicants' Claim 5: "... to automatically engage in a commercial transaction with a centralized exchange on behalf of the intermediary ..."

Finally, either after, before, or concurrently with execution of the hedge, the systems and methods of the invention facilitate the transaction between the buyer and seller.

B. THE DISCLOSURE OF FERSTENBERG

In complete contrast to Applicants' claims, Ferstenberg is directed to exchange of financial commodities between multiple participants, such as investors and investing entities, according to the goals of the participants. FERSTENBERG, col. 2, lines 59-67.

The five embodiments disclosed by Ferstenberg can be generalized as follows. Each participant is represented by an e-agent computer program, where the computer associated with the e-agent program stores data representing participants' exchange objectives. An intermediary program and associated computer store exchange objectives of an intermediated exchange. The e-agent receives electronic offer messages for financial commodities from the intermediary program and generates electronic counter offers according to the participants' exchange objectives, which are transmitted to the intermediary program. The intermediary program receives the e-agents counter offers and generates responsive offer transmissions according to the intermediated exchange's objectives and sends the offers to the e-agents. The negotiation results in an exchange of commodities satisfactory to both the participants, according to their exchange objectives and to the intermediated exchange, based on its objectives.

C. FERSTENBERG DOES NOT TEACH OR SUGGEST APPLICANT'S CLAIMED INVENTION

The 35 U.S.C. § 103 rejection should be withdrawn because Ferstenberg does not teach or suggest each material element of Applicants' claimed invention. That is, Ferstenberg does not teach or suggest facilitating an exchange between a buyer and a seller in combination with Applicants' claim elements of: (1) generating an exchange structure specific to the buyer; and (2) automatically facilitating a separate transaction between the buyer and a centralized exchange (e.g., hedging the buyer's purchase). Both of these elements are present in Applicants' independent claims 1 and 5 as set forth in Table 1 below.

TABLE 1: Applicants' Claim Elements Not Taught or Suggested by Ferstenberg

Claim No.	Applicants' Claim Elements Not Taught or Suggested by Ferstenberg	Applicants' Corresponding Claim Recitation
Claim 1	generating an exchange structure specific to the buyer	"wherein the third computing subsystem calculates the flat price by adding the basis provided by the intermediary from the current trading price obtained from the commodities exchange"
Claim 5	generating an exchange structure specific to the buyer	"configured to generate an exchange structure specific to the intermediary based upon the information stored in the memory for the intermediary and the data obtained from the external source"
Claim 1	automatically facilitate a separate transaction between the buyer and a centralized exchange	"and to communicate with the commodities exchange on behalf of the intermediary in order to attempt to obtain a futures contract for the commodity in an amount as close as possible to (within pre-set parameters), but not exceeding the available quantity"
Claim 5	automatically facilitate a separate transaction between the buyer and a centralized exchange	"to automatically engage in a commercial transaction with a centralized exchange on behalf of the intermediary"

Because Applicants claimed systems generate an exchange structure specific to the buyer, the buyer's bid price can be automatically and continually updated based upon current trading prices and the buyer's basis.

And because Applicants' methods and systems automatically facilitate a separate transaction between the buyer and a centralized exchange, the buyer can execute a hedge transaction with a centralized exchange, such as the Chicago Board of Trade. Thus, the buyer can offset the risk associated with purchasing the agricultural commodity from the seller.

As discussed above, Ferstenberg merely provides general teachings of transactions based on participants' trading objectives. In the Office Action, the Examiner states:

"[I]t would have been obvious to one having ordinary skill in the art at the time of the invention to have transmitting a web page to a producer of an agricultural commodity, wherein the web page includes the quantity of the commodity desire to be purchased by the intermediary, and further establishing a flat price for the commodity wherein the price is calculated by adding the basis provided by the intermediary from the current trading price obtained from the commodities exchange. OFFICE ACTION p. 2.


Not only is this obviousness argument an unsupported assumption, the Examiner has left out the fact that Applicants' claimed systems automatically facilitate a separate transaction between the buyer and a centralized exchange.

In sum, since Ferstenberg does not teach or suggest all of Applicants' material claim elements and provides no motivation to one of ordinary skill in the art that the claimed invention could be carried out with a reasonable likelihood of success, the rejections should be withdrawn.

III. CONCLUSION

In view of the above remarks, Applicant has overcome all rejections, and reconsideration is requested. No fee is required for entry of this Reply. If any fee is due, however, please charge the required fee to deposit account number 501358.

Respectfully submitted,


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